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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 506

NEW YORK SHIPPING ASSOCIATION, INC., AMERICAN STEVEDORES, INC., BAY RIDGE OPERATING COMPANY, INC., HELLENIC LINES LTD., MARRA BROS., INC., JOHN W. McGRATH CORPORATION, NORTHEAST STEVEDORING CO., NORTHEAST MARINE TERMINAL CO., INC., INTERNATIONAL TERMINAL OPERATING CO., INC., DANIELS & KENNEDY, INC., PITTSTON STEVEDORING CORP., UNIVERSAL TERMINAL & STEVEDORING CORP., ALEXANDER CHOPIN, W. A. CRAIG, D. H. McKAY, R. W. NEITZ, F. L. RESPAUT, D. J. SCHMIDT, and J. B. YOUNG, *Petitioners*,

v.

DISTRICT 2, MARINE ENGINEERS BENEFICIAL ASSOCIATION (AFL-CIO), RAYMOND McKAY, President, SHORESIDE SUPERVISORS UNION, DISTRICT 2, MEBA (AFL-CIO), ROSARIO CICCONE, Executive Director, and SALVATORE DANTONE, JACK GIORDANO, THOMAS COSTA, PETER THOMASINO, FRANK DANTONE, DANIEL POTHIN, JOHN GARAMANTI, LEONARD NOVA and RALPH HANNEN, on behalf of themselves and all others similarly situated, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Petitioners pray that a writ of certiorari issue to review the memorandum and order of the Court of Appeals of the State of New York, entered in the above case on June 14, 1968.

OPINIONS AND ORDERS BELOW

The order of the Supreme Court of New York (Kings County) at Special Term (R. 7-10) was entered on November 2, 1967, and was accompanied by an opinion which is reported at —— M. 2d ——, —— N.Y.S. 2d ——, appears at pages 138-140 of the record below, and is printed as Appendix B hereto. This order dismissed respondents' complaint, ordered a trial on petitioners' counterclaim for damages, and enjoined, *pendente lite,* respondents from picketing.

The order of the Appellate Division of the Supreme Court of New York, Second Department, which unanimously affirmed the order of the Supreme Court of New York, was entered on January 17, 1968, and was accompanied by an opinion which is reported at 29 A.D. 2d 139, 287 N.Y.S. 2d 799, appears at pages 145-152 of the record below, and is printed as Appendix C hereto.

The order of the Court of Appeals of the State of New York, which modified the orders below, was entered on June 14, 1968, and was accompanied by a memorandum opinion which is reported at —— N.Y. 2d ——, —— N.E. 2d ——, —— N.Y.S. 2d ——, and is printed in Appendix D hereto. This order, in which all judges of the Court of Appeals concurred except Judge Scilleppi, who dissented and voted to affirm, denied petitioners' cross-motion for a temporary injunction against picketing by respondents and, as so modified, affirmed the orders below.[1]

---

[1] On August 19, 1968, Mr. Justice Harlan denied petitioners' application for a stay, but did so on the basis of a draft of our petition for a writ of certiorari which was incomplete and in substantial respects different from the final petition presented here.

JURISDICTION

The order of the New York Court of Appeals modifying the orders below of the Appellate Division and of the New York Supreme Court was entered June 14, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

At every stage of these proceedings, petitioners have relied upon §§ 2(3) and 14(a) of the Labor Management Relations Act of 1947; have asserted that the substantive law applicable to this case is set forth in that Act, in the decision of this Court in *Hanna Mining Co.* v. *District 2, MEBA,* 382 U.S. 181 (1965), and in the reports of congressional committees interpreting said Act, and have argued that the picketing here was enjoinable by a state court because it represented illegal economic compulsion proscribed by federal law and in contravention of federal labor policy.[2] All three New York courts that have passed upon this case have relied upon and have purported to interpret federal law.

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[2] Memorandum in Support of Defendant-Employers' Motion for Injunctive Relief, Supreme Court of New York, Kings County (Special Term, Part I, pp. 4-9); Memorandum of Respondent, New York Shipping Association, Inc., et al. in Opposition to Appellants' Application and Motion for a Stay Pending Appeal, Appellate Division of the Supreme Court of New York, Second Department (pp. 5-7); Supplemental Memorandum of Defendants-Respondents, New York Shipping Association, Inc., et al. in Opposition to Plaintiffs-Appellants' Appeal, Appellate Division, Supreme Court of New York, Second Department (pp. 7-16); Brief of Respondent, New York Shipping Association, Inc., et al., Court of Appeals, State of New York (pp. 9-19).

STATUTES INVOLVED

The statutory provisions involved are §§ 2(3) and 14(a) of the Labor Management Relations Act of 1947 (61 Stat. 137, 151; 29 U.S.C. §§ 152(3), 164(a) (1964)), and New York Labor Law, Art. 22-A, § 807. They are printed in Appendix A, *infra*.

QUESTIONS PRESENTED

1. Whether the New York Court of Appeals, ignoring all federal law and authority and disregarding the national labor policy, can misinterpret the Labor Management Relations Act of 1947 and that national policy by permitting a union of supervisors (who are the indisputable agents of management and owe their allegiance exclusively to management) to picket management to compel recognition for collective bargaining purposes.

2. Whether Congress by § 14(a) of the Act did more than merely deprive supervisors of the administrative remedies of the Wagner Act, a deprivation already effected by § 2(3) of the Act, and whether, in fact, Congress' "propelling intention" in § 14(a) as described by this Court in *Hanna Mining Co.* v. *District 2, MEBA* was not to deprive supervisors of any power of compulsion.

3. Whether § 14(a) of the Act, in its use of the clause

> * * * but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

comprehends within the ambit of "any law" not only compulsion effected through processes of federal and state agencies but also compulsion effected through any state law, whether statutory or decisional.

4. Whether New York Labor Law, Art. 22-A, § 807, is void as repugnant to paramount federal labor law insofar as it forces employers to treat supervisors as rank-and-file employees for purposes of collective bargaining.

STATEMENT

Petitioners are steamship and stevedoring companies in the Greater New York area, including New Jersey; their collective bargaining representative, the New York Shipping Association, Inc. (NYSA); the International Longshoremen's Association, AFL-CIO (ILA), and various officers of these companies and organizations. Respondents are District 2, Marine Engineers Beneficial Association, AFL-CIO (MEBA), the Shoreside Supervisors Union (SSU), and certain of their officers. MEBA is a labor organization representing only supervisory employees in the maritime industry (R. 35), and SSU is a labor union chartered by MEBA to organize supervisory employees in that industry.

The dispute in this case arose during the summer of 1967, when MEBA and SSU approached the petitioner employers and sought recognition for SSU as the collective bargaining representative of the employers' supervisory personnel (pier superintendents and hiring agents) working in Brooklyn alone. These pier supervisors and hiring agents are not "working men" or "rank and file employees" in any sense of the word,

nor have the respondent unions claimed that they were (see R. 15). They earn from $10,000 to $30,000 a year, they are in charge of entire piers and terminals, and they regularly hire, on behalf of management, hundreds of longshoremen and checkers.

SSU threatened to picket if its demands were not met. SSU had no strength in any other part of the Port of New York, and it depended for its success on the affirmative support of one of the locals of longshoremen in that Port, namely, Local 1814 of ILA. This support was not long in coming. Local 1814 strongly supported and encouraged SSU, contrary to the instructions of its parent international (R. 43). The President of Local 1814, after noting that SSU was planning to strike against various employers doing business on the Brooklyn waterfront, reported the adoption of a resolution:

> That Local 1814 give complete support in [SSU's] action to gain representation for the members of that union. [R. 101.]

The President of Local 1814, moreover, actively participated in presenting SSU's representation demands and threatened the employers with the consequences of refusal (R. 44, 101).

Petitioner employers refused to recognize the respondent unions as the bargaining agents of their supervisory personnel. Thereupon, on October 19, 1967, the respondents picketed every pier in Brooklyn.

When SSU struck, approximately 250 pier superintendents and hiring agents left their jobs. This fact alone did not stop the respondent employers' operations in Brooklyn. The Brooklyn longshoremen-members of Local 1814, however, refused to cross the SSU

picket lines. This prevented the loading and unloading of cargo and brought the operations of these employers in Brooklyn to a complete halt.

On the same day, October 19, the joint NYSA-ILA Labor Relations Committee issued a determination and order holding that the work stoppage engaged in by Local 1814 was in violation of the labor contract between NYSA and ILA and directing the Local 1814 longshoremen back to work. This direction was ignored.

Thus, with the active, widespread and powerful cooperation of the rank and file employees—in direct violation of a "no-strike" agreement—the SSU strike was an unqualified success.

The impact of the strike—even though it continued in effect only fifteen days before being enjoined by the courts—was catastrophic.

—It immobilized 40 ships.

—One-third of the Port of New York was completely shut down.

—Over 10,000 employees of shipping companies, stevedores, freight forwarders, consignees and other businesses were laid off.

—Millions of dollars worth of Christmas merchandise was spoiled or irretrievably delayed en route.

—The aggregate cost *per day* to the shipping industry in the Port in terms of lost business, cargo, deprivations, etc., exceeded $3,000,000.

The restricted area of the strike is pertinent. For more than 60 years, steamship and stevedore employers have dealt with unions on a single portwide basis,

covering not only Brooklyn but Manhattan, Staten Island, Hoboken, Newark, Jersey City, Bayonne and Elizabeth. The NLRB certification of the ILA covers all waterfront employees "in the Port of Greater New York and vicinity * * * ". *New York Shipping Association, Inc.*, 116 N.L.R.B. 1183, 1188 (1956).

The very ILA Local supporting SSU in this action and in the strike which brought about this action, Local 1814, unsuccessfully sought a bargaining unit in 1956 different from that certified by the NLRB.

Brooklyn is only a part of the overall port-wide unit. Of the 22,000 longshoremen and 1,000 pier superintendents and hiring agents throughout "the Port of Greater New York and vicinity", only about 8,000 longshoremen and about 250 pier superintendents and hiring agents usually work in Brooklyn (R. 30, 36). Many Brooklyn longshoremen and supervisory employees work for their employers in other locations in the Port as well.

Four days after the strike began, SSU and MEBA filed a complaint against petitioners in the New York Supreme Court, Kings County, at Special Term. It alleged two causes of action in "conspiracy", the first a "conspiracy" among petitioners to "destroy" SSU and MEBA; the second a "conspiracy" to prevent respondents "from exercising their constitutional rights to belong to a labor union of their own choosing" (R. 19). SSU and MEBA also moved to enjoin petitioners from carrying out their "conspiracy".

Petitioners joined issue, counterclaimed for damages and sought a permanent injunction against the picketing. Petitioners also cross-moved for a temporary injunction against the picketing and for dismissal of the complaint for insufficiency (R. 125-137).

The New York Supreme Court granted both of petitioners' motions by order entered November 2, 1967 (R. 7-10, App. B). The Appellate Division of the Supreme Court of New York, Second Department, unanimously affirmed that order by its order entered January 17, 1968 (R. 143-144, App. C). In its order of June 14, 1968, the Court of Appeals of the State of New York in effect unanimously affirmed the lower courts' dismissal of the complaint for insufficiency and their denial of respondents' motion for an injunction. By a divided court, however, that order also dissolved the injunction against the SSU picketing (App. D).

Respondents expressly and repeatedly conceded below three important facts:

(1) The pier superintendents and hiring agents they were trying to represent are supervisory and therefore are not deemed "employees" under the Act (R. 15).

(2) Respondents sought to organize only the supervisors employed by the petitioner employers in Brooklyn, although for many decades the appropriate bargaining unit of the maritime industry has always encompassed the entire metropolitan New York area ("the Port of Greater New York and vicinity"), and most of the employers involved have places of business throughout the metropolitan New York area (R. 14, 22, 23).

(3) Employers have the full legal right not only to refuse to bargain with unions claiming to represent supervisory employees but to go even further and fire such supervisory employees (Respondents' Main Brief, Court of Appeals, State of New York, pp. 11-24).

REASONS FOR GRANTING THE WRIT

I

The decision of the New York Court of Appeals gives a revolutionary and erroneous interpretation of §§ 2(3) and 14(a) of the Labor Management Relations Act of 1947, 29 U.S.C. §§ 152(3), 164(a), and is in direct conflict with paramount federal law. In holding that a union purporting to represent supervisors may picket to compel recognition for collective bargaining purposes, that decision contravenes national labor policy, the intent of Congress and the opinion of this Court in *Hanna Mining Co.* v. *District 2, MEBA, supra.*

At the heart of this case is the meaning to be given to §§ 2(3) and 14(a) of the Act, which read in pertinent part as follows:

> [§ 2(3):] The term "employee" shall include any employee * * * but shall not include * * * any individual employed as a supervisor.
>
> [§ 14(a):] Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act *shall be compelled* to deem individuals defined herein as supervisors as employees *for the purpose of any law, either national or local, relating to collective bargaining.* [Emphasis supplied.]

That these sections of the Act express a national labor policy enforceable in the States is not open to doubt.

> * * * It can readily be seen what mischief might be wrought if, for example, foremen should be subject to State law at the same time that the workers they supervise are subject to national law.

> Moreover, the bill herewith reported *very definitely states a national policy in respect of organization and collective bargaining by foremen.* [H. R. Rep. No. 245, 80th Cong., 1st Sess. 40 (1947); emphasis supplied.]

What is that national policy? What did Congress intend?

Very simply, that policy and intent are that since supervisors are "a part of management" and must be "wholly loyal to management," employers must be free from any compulsion by supervisory unionism to compel recognition. The very idea of legal or economic compulsion is alien to the obvious need and desirability of supervisors' undivided loyalty to management. As Senator Taft, the chief sponsor of the Act, stated in explaining § 14(a):

> It is felt very strongly by management that foremen are part of management; that it is impossible to manage a plant unless the foremen are wholly loyal to the management. We tried various in-between steps, but the general conclusion was that they must either be a part of management or a part of the employees. It was proposed that there be separate foremen's unions not affiliated with the men's unions, but it was found that that was almost impossible; that there was always an affiliation of some sort; that foremen, in order to be successful in a strike, must have the support of the empolyees' union. * * * The tie-up with the employees is inevitable. [93 Cong. Rec. 3836 (1947).]

Throughout the House Report on the Act, there is emphasis upon the necessity and importance of supervisors being faithful agents of management, failing which, "instead of their bossing the rank and file, the

rank and file bosses them" (H.R. Rep. No. 245, 80th Cong. 1st Sess. 14 (1947)). "[T]he complete disruption of discipline and productivity in the factories of the United States" would result (93 Cong. Rec. 3836 (1947) (remarks of Senator Taft).

The case at bar illustrates the very vices aimed at by Congress in § 14(a). Respondents' supervisory picketing would have been completely ineffectual if the picket lines had not been recognized by the thousands of rank-and-file employees over whom the picketing supervisors had charge. Here, pier superintendents and hiring agents formed their alliances with the Brooklyn longshoremen in violation of their duties and their loyalty to management.

In *Hanna,* the same respondent as involved here, MEBA, already represented supervisory personnel and was seeking to negotiate a new contract.[3] When the employers refused to negotiate, MEBA began picketing and, just as in the instant case, longshoremen joined the supervisory personnel in refusing to cross the picket lines. When the NLRB specifically declined to intervene because supervisors fall outside §§ 7 and 8 of the Act, the employers filed suit in the Wisconsin state courts. An important difference between *Hanna* and this case is that in *Hanna* the state courts wanted to issue an injunction against the picketing but thought they were precluded from doing so by the Federal Act. The only issue presented in *Hanna* was whether the

[3] The right of MEBA and SSU to negotiate in the instant case is even more tenuous than in *Hanna,* because here petitioners' supervisory employees have never before been represented by MEBA, SSU or any other union. Moreover, in *Hanna,* unlike here, the entire area under dispute was picketed rather than a select portion of it.

NLRB had exclusive jurisdiction over the dispute and whether the state was thus precluded from entering its injunction. Although there was no issue as to whether the state *had* to issue an injunction in order to conform to federal law, the Court's language in deciding *Hanna* is nevertheless extremely pertinent to the issues here.

The Court first pointed out that § 7 no longer bestows on supervisory empolyees the right to engage in concerted activities under the umbrella of § 8, and therefore any activity designed to secure organization or recognition of supervisors cannot be protected by § 7 (382 U.S. at 188).

MEBA argued that the Act evidenced a federal policy of *laissez faire* toward supervisors, so that the state as well as the NLRB was without authority to act. At the same time, MEBA argued that the state injunction would prohibit supervisors from joining unions, which was a right expressly reserved to them by Congress.

This Court disagreed with both contentions. It said:

> This broad argument fails utterly in light of the legislative history, for the Committee reports reveal that Congress' propelling intention was to relieve employers from any compulsion under the Act and under state law to countenance or bargain with any union of supervisory employees. [382 U.S. at 189; footnote deleted.]
>
> * * *
>
> However, even assuming that § 14(a) itself intended also to make it clear that state law could not prohibit supervisors from joining unions, the section would have no application to the present facts; for picketing by a minority union to extract recognition by force of such pressures is

> decidedly not a *sine qua non* of collective bargaining, as indeed its limitation by § 8(b)(7) in non-supervisor situations attests. [382 U.S. at 190.]

In other words, this Court sharply differentiated between the right to join a union and the right of a union to compel recognition by compulsion. That is precisely the differentiation which the New York Court of Appeals failed to make in this case.

The fact is that if the compulsion used by respondents in this case remains unchecked, the entire congressional purpose of placing supervisors outside the protection of §§ 7 and 8 will have been thwarted and emasculated. As pointed out above, the only point of making these sections inapplicable to supervisors was to maintain supervisors as part of management. Yet the direct result of the decision below would be to *force* management to recognize a union of supervisors on a level with its rank-and-file employees. While supervisors in Wisconsin are prohibited from engaging in such compulsion, supervisors in New York would have the approving and protective stamp of the law placed upon the same compulsion.

The New York Court of Appeals in this case adopted the very *laissez faire* viewpoint which this Court rejected in *Hanna*. The New York court held:

> Section 14(a) of the Labor Management Relations Act prevents supervisors' unions from claiming the benefit of statutes requiring employers to bargain collectively but does not limit their right to engage in otherwise lawful picketing, (*A.H. Bull Steamship Co.* v. *National Marine Eng. B. Ass'n.*, 250 F. 2d 332, 339, cert. den., 355 U.S. 932; see *Hanna Mining Co.* v. *Marine Engineers*, 382 U.S. 181, 189). [App. D.]

This statement is twice wrong.

It is not § 14(a) which "prevents supervisors from claiming the benefits of statutes requiring employers to bargain collectively * * * ". That deprivation was accomplished by § 2(3), which specifically excludes supervisors from the definition of "employees" protected by the Act. If such deprivation was the purpose of § 14(a), that section would be mere surplusage.

Section 14(a) had a different, an expressly stated, and a more extensive purpose. As this Court pointed out in *Hanna,* that purpose was to relieve employers from "compulsion". Thus, the second error of the decision below lies in its assertion that § 14(a) "does not limit [supervisors'] * * * right to engage in otherwise lawful picketing".

In addition to the concept of compulsion, § 14(a) deals in the most generic way possible with the concept of "law" when it uses the phrase, " * * * for the purpose of any law, either national or local, relating to collective bargaining". The section did not use the word, "Act", referring to the Labor Management Relations Act itself, although in the key clause of this very § 14(a), the word "Act" is used (" * * * but no employer subject to this Act * * * "). Obviously, therefore, the word "law" here means more than the Act or the judicial or administrative procedures comprehended by the Act or by equivalent state legislation.

Similarly, the word "law" includes more than other statutory enactments, administrative regulations and like classifications. Unquestionably "any law" in this context means any expression of the sovereign's power —whether in the form of statutory law, decisional law, common law, substantive law, adjectival law or admin-

istrative law. Thus, it matters not in what "law" or exercise of sovereign power the compulsion proscribed by § 14(a) originates. The prohibition is all-encompassing; no compulsion of any kind or created out of any "law" is permissible.

Petitioners submit that if a state legislature enacted a statute with the identical expression used by the New York Court of Appeals, namely, that supervisors have "a right to engage in * * * picketing" to compel recognition, that statute would be a "local law" "relating to collective bargaining", which the legislature would be expressly prohibited from enacting by § 14(a).

What the Legislature cannot do by statute, the Court of Appeals may not do by decision.

Ironically, although Congress intended that supervisors would *not* have the protection of §§ 7 and 8 of the Act so that they would remain part of management, the decision below gives supervisors rights which are far greater than those possessed by rank-and-file employees who *are* protected by these sections. For example, prohibitions in the Act against secondary boycotts would have no effect upon a supervisory union. Similarly, supervisors could arrogate to themselves any bargaining unit which they wish, and strike and picket for recognition of that unit. In this very case, respondents have argued that "any unit [which] supervisors can succeed with is, thus, in laymen's terms, appropriate * * *" (See Appellants' Reply Brief, Court of Appeals of the State of New York, p. 14). Surely Congress did not intend, by taking supervisors out from under the umbrella of the Act, to give them greater bargaining power, and greater license to act beyond any legal control, than the power and license enjoyed by rank-and-file employees.

There is nothing unique in the labor field about state courts having jurisdiction to enforce federal law. Thus, suits for violation of § 301(a) of the Labor Management Relations Act of 1947 may be brought in the state courts, which must then follow the national labor policy.[4] *Vaca* v. *Sipes*, 386 U.S. 171 (1967); *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 514 (1962); *Smith* v. *Evening News Ass'n*, 371 U.S. 195 (1962); *Local 174* v. *Lucas Flour Co.*, 369 U.S. 95, 104 (1962). As this Court pointed out in *Courtney, supra*, 368 U.S. at 507, "* * * nothing in the concept of our federal system prevents state courts from enforcing rights created by federal law." (In fact, some federal laws can be enforced *only* in the state courts. *Id.* at 508 n. 4.) Suits under § 301(a) have been held to lie in the state courts even when the NLRB arguably has

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[4] This body of law has been variously described as "Federal labor policy" (*Republic Steel Corp.* v. *Maddox*, 379 U.S. 650, 652 (1965)), "the national labor policy" (*Amalgamated Ass'n* v. *Wisconsin Board*, 340 U.S. 383, 397-398 n.23 (1951)), "national labor policy" (*John Wiley & Sons, Inc.* v. *Livingston*, 376 U.S. 543, 549 (1964); *Liner* v. *Jafco, Inc.*, 375 U.S. 301, 308 (1964); *Local No. 438* v. *Curry*, 371 U.S. 542, 550 (1963); *Smith* v. *Evening News Ass'n*, 371 U.S. 195, 198 n.6 (1962)), "federal common law" (*Wheeldin* v. *Wheeler*, 373 U.S. 647, 651-652 (1963)), "federal common law in this area of labor management relations" (*Charles Dowd Box Co.* v. *Courtney, supra*, 368 U.S. at 507), "the policy of our national labor laws" (*Local 174* v. *Lucas Flour Co.*, 369 U.S. 95, 103 (1962)), "national labor policies" (*Vaca* v. *Sipes, supra*, 386 U.S. at 180), "the scheme of federal labor laws" (*Vaca* v. *Sipes, supra, id.* at 188), and the "uniform body of federal substantive law" (*Smith* v. *Evening News Ass'n, supra*, 371 U.S. at 200). Perhaps the most recent treatment of "the national labor policy" has been in *United Industrial Workers* v. *Board of Trustees of Galveston Wharves*, 5th Cir., No. 25081, August 8, 1968, pp. 28, 33 of slip opinion. Regardless of how labeled, this policy is clearly an amalgam of substantive federal law and is enforceable in the state courts.

jurisdiction over the conduct complained of (*Smith* v. *Evening News Ass'n, supra,* 371 U.S. at 197, and *Vaca* v. *Sipes, supra*), as well as when the Board is wholly without jurisdiction (*Charles Dowd Box Co.* v. *Courtney, supra,* 368 U.S. at 513).

The situation in the instant case is quite analogous to that in *Local 174* v. *Lucas Flour Co., supra,* 369 U.S. 95, where an employer fired an employee, the union struck, and the employer sued in a state court. This Court held that § 301(a) did not deprive the state court of jurisdiction but that federal law applied. Noting that the subject matter was "peculiarly one that calls for uniform law" (369 U.S. at 103), this Court held that "incompatible doctrines of local law must give way to principles of federal labor law."[5] The Court added: "State law which frustrates the effort of Congress to stimulate the smooth functioning of that process [promoting industrial peace] thus strikes at the very core of federal labor policy."[6]

Thus, it is important that the Court review the decision below not only because of the extremely serious economic results that will flow from another work stoppage—at least $3,000,000 a day, judged by the

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[5] 369 U.S. at 102, quoted with approval in *International Union* v. *Hoosier Cardinal Corp.*, 383 U.S. 696, 701 (1966). This doctrine is hardly unique. In other cases the Court has said that "• • • there are enclaves of federal judge-made law which bind the states." *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 426 (1964). "State law may be utilized so far as it is of aid in the development of correct principles of their application in a particular case • • •, but the law which ultimately results is federal." *John Wiley & Sons, Inc.* v. *Livingston*, 376 U.S. 543, 548 (1964).

[6] 369 U.S. at 104, quoted with approval in *International Union* v. *Hoosier Cardinal Corp., supra,* 383 U.S. at 702.

prior strike—but because the entire fabric of the national labor policy will be disrupted and fragmented if the New York view prevails.

The decision below casts a cloud over the clear meaning of *Hanna,* puts in serious doubt the capacity of state courts to enjoin supervisory picketing,[7] and virtually invites conflicting results in the various states on a matter of concern to all employees and employers. Perhaps most importantly, the view below directly thwarts the congressional will, for it casts the supervisors' lot with that of the rank-and-file employee.

II

The New York statute upon which the highest court of New York relied is in conflict with paramount federal law insofar as it applies to supervisors.

As this Court pointed out in *Hanna,* the intent of Congress in enacting § 14(a) was to relieve employers of any pressure under local law to bargain collectively with supervisors as if they were employees.

New York Labor Law, Art. 22-A, § 807, prohibits New York State courts from issuing an injunction in any case arising out of a labor dispute:

> 1. No court nor any judge or judges thereof shall have jurisdiction to issue any restraining order or a temporary or permanent injunction in any case involving or growing out of a labor dispute, as hereinafter defined * * *.

Section 807 goes on to define a labor dispute as follows:

> 10 (c). The term "labor dispute" includes any controversy concerning terms or conditions of em-

[7] See, *e.g., Safeway Stores* v. *Retail Clerks International Ass'n,* 41 Cal. 2d 567, 261 P.2d 721 (1953).

> ployment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, or concerning employment relations, or *any other controversy arising out of the respective interests of employer and employee, regardless of whether or not the disputants stand in the relation of employer and employee.* [Emphasis added.]

These words thus define a labor dispute to include any controversy involving the interests of employees or employers, whether or not the disputants actually stand in that relationship.

The New York Court of Appeals has held that MEBA is protected by § 807 and that the court cannot enjoin a strike by MEBA intended to force petitioners to bargain collectively with them. This interpretation of § 807 puts it in direct conflict with § 14(a). Section 14(a) relieves employers of compulsion under state law to deal with supervisors as they do with rank-and-file employees. Section 807 as applied by the Court of Appeals bestows upon supervisors the protection afforded rank-and-file employees in labor disputes. Under this application, New York employers must now treat supervisors as rank-and-file employees for the purposes of § 807, a local law. Clearly the two laws—state and federal—canot be reconciled.

Since this Court cannot resolve the conflict by putting a different gloss on § 807, it should hold that the federal law embodied in § 14(a) controls, and reverse the decision of the New York Court of Appeals.

CONCLUSION

Picketing by supervisors to compel recognition for collective bargaining purposes violates the spirit, intent and express prohibition of § 14(a). If all that section was intended to accomplish was the denial to supervisors of Wagner Act remedies, then the section is surplusage.

Unless the compulsion proscribed by § 14(a) is given the broad effect which Congress intended, a Pandora's Box of labor problems will be opened heralding a significant future period of industrial strife. At the very least, there will be forum-shopping by unions and employers—*e.g.*, New York versus Wisconsin—in regional or national disputes, despite the necessity for a "uniform application" of substantive rules and the need "to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies * * *."[8]

The decision of the New York Court of Appeals should be reversed.

Respectfully submitted,

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[8] *Garner* v. *Teamsters Union*, 346 U.S. 485, 490-91 (1953), quoted with approval in *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 242-43 (1959).